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Constitutional Law

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VII. Departmental Separation of Governmental Powers [§§ 246–312]

B. Executive Powers [§§ 255–258]

Topic Summary Correlation Table References

§ 257. Limitations as respects judiciary—Actions of administrative agencies

As a part of the executive branch of government, an administrative tribunal is not a court; it is not a part of the judicial branch of government, for purposes of the separation of powers doctrine.[7] And as a general rule, administrative agencies have no general judicial powers.[8] Thus, an administrative agency does not have the power, without statutory authority, to overrule or ignore a judicial precedent.[9] Moreover, the general rule is that an administrative agency may not determine constitutional issues, and is not authorized to consider or question the constitutionality of a legislative act or to declare unconstitutional statutes which it was created to administer and enforce.[10]

However, an agency in the executive branch may be called upon to adjudicate disputes of a type that might ordinarily otherwise be resolved by a court, and may perform such adjudicatory functions in harmony with the separation of powers doctrine, provided that there is an opportunity for judicial review of the agency's final determination.[11] And it is widely recognized that an administrative agency may have judicial and legislative, or legislative, executive, and judicial, powers or functions, sometimes softened by the word "quasi."[12] or stated to be in nature judicial and legislative.[13]

The power to determine controverted rights to property by means of a binding judgment typically is vested in the judicial branch, but the separation of powers principle does not bar administrative agencies of the executive branch from working in tandem with the judicial branch to administer justice under appropriate circumstances, and administrative factfindings are a necessary aspect of administrative discretion rather than an exclusively judicial function.[14] In addition, while the doctrine of separation of powers is fundamental to our form of government, it is not absolute, and it does not require that administrative agencies never consider the constitutionality of an administrative action.[15]

[FN7] Quinton v. General Motors Corp., 453 Mich. 63, 551 N.W.2d 677 (1996), reh'g denied, 453 Mich. 1205, 554 N.W.2d 12 (1996).

[FN8] State ex rel. Stenberg v. Murphy, 247 Neb. 358, 527 N.W.2d 185 (1995) (unless permitted by the Constitution, the legislature may not authorize administrative officers or bodies to exercise powers which are essentially judicial in nature or to interfere with the exercise of such powers by the courts).

[FN9] Hecker v. Stark County Social Service Bd., 527 N.W.2d 226 (N.D. 1994), reh'g denied, (Feb. 8, 1995).

[FN10] Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446 (Tenn. 1995) (the facial constitutionality of a statute may not be determined by an administrative tribunal in a contested case proceeding; an administrative agency is the creation of the legislature, and may not be granted and may not assume the power to determine the constitutionality of a statute, which task rests with the judiciary).

[FN11] Maryland Aggregates Ass'n, Inc. v. State, 337 Md. 658, 655 A.2d 886 (1995), cert. denied, 514 U.S. 1111, 115 S. Ct. 1965, 131 L. Ed. 2d 856 (1995).

When payment of an administrative penalty is a prerequisite to judicial review, the payment requirement runs afoul of the state constitution's provisions regarding separation of powers. Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618 (Tex. 1996), reh'g of cause overruled, (Aug. 16, 1996).

[FN12] Slack Nursing Home, Inc. v. Department of Social Services of State of Neb., 247 Neb. 452, 528 N.W.2d 285 (1995) (some administrative agency determinations possess quasi-judicial characteristics and are appealable; de novo review from appeals involving the exercise of an agency's quasi-judicial powers is not violative of the constitutional separation of powers doctrine).

The separation of powers doctrine does not prohibit every exercise of judicial functions by individuals or groups outside the judiciary; however, the judiciary must maintain the power to check the exercise of judicial functions by quasi-judicial tribunals, ensuring that the essential attributes of judicial power, vis-à-vis other governmental branches, remain in the courts. Board of Educ. of Carlsbad Mun. Schools v. Harrell, 118 N.M. 470, 882 P.2d 511, 94 Ed. Law Rep. 966, 9 I.E.R. Cas. (BNA) 1693 (1994).

An administrative agency can have duties of a quasi-judicial nature in addition to its rulemaking duties; the conferring upon state agencies or officers of executive or administrative functions requiring the exercise of quasi-judicial powers does not conflict with constitutional provisions regarding the officers and bodies upon whom the judicial power may be conferred, particularly where a provision is made for appeals from decisions of such officers or agencies to the courts. Slack Nursing Home, Inc. v. Department of Social Services of State of Neb., 247 Neb. 452, 528 N.W.2d 285 (1995).

[FN13]

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See 2 Am. Jur. 2d, Administrative Law §§ 53, 69.

[FN14] Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618 (Tex. 1996), reh'g of cause overruled, (Aug. 16, 1996).

[FN15] Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446 (Tenn. 1995) (an administrative body in a contested case proceeding may resolve questions of the unconstitutional application of a statute to the specific circumstances of a case or of the constitutionality of a rule that the agency has adopted; and it may address a claim that the agency's procedure is constitutionally deficient).

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